IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2883 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH HARILAL VARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2883 of 2004

MRS S G Patel for Mr AR SHAIKH for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under undesr Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 30.10.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that five FIRs were registered against the petitioner. Four of them were registered before Kirtimandir police station at Porbandar being C.R. Nos.5168/2001, 5169/01, 5025/2002 and 5026/2002 for offences punishable under sections 65 and 66 of the Bombay Prohibition Act, 1949. The fifth one was registered before Kamlabag police station at Porbandar being C.R. No.5089/03 for the aforesaid offences. It was also alleged that six witnesses had rendered statements against the petitioner. That on the strength of the aforesaid registered offences and on the strength of the statements of the witnesses it was noticed that the petitioner's activities were such that they would lead to a threat to public order or public health. Therefore, the petitioner was ordered to be detained by the impugned order of detention by the District Magistrate, Porbandar.

3. Feeling aggrieved by such an order, the petitioner has preferred this petition challenging the order of detention. It has been contended here that though the statements of the witnesses are said to have been verified by the detaining authority in para 4 of the grounds for detention at page 36, the compilation shows that the statements have not been verified by the detaining authority and, therefore, the order of detention suffers from non-application of mind and, therefore, it is illegal and deserves to be set aside.

4. On receiving the petition, rule was issued and in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

5. Learned Advocate for the petitioner has contended that it has been mentioned in para 4 of the grounds of detention at page 36 that the statements of six witnesses were recorded by the concerned police officer. That they were verified by Dy.S.P., Porbandar and they were further verified by the detaining authority.

6. The said statements can be gathered at page 127 onwards. On perusing the said statements from page 127

onwards, it can be gathered that the statements were recorded by the Police Inspector on the dates stated in the said statements. The statements also show that they were verified by the Dy.S.P., Porbandar. However, there is nothing on record to show that the statements were further verified by the detaining authority. Therefore, learned Advocate for the petitioner appears to be right when she has argued that the statements have not been verified by the detaining authority. Once it is found that the detaining authority has mentioned that the statements of witnesses were verified by the detaining authority and when the papers show that that the said statements were not verified by the detaining authority, the above statement of facts made in the grounds of detention suffers from vice of non-application of mind. Therefore, the order would naturally be required to be treated to be illegal one on account of non-application of mind. Even if we take it that the detaining authority had really verified and examined the witnesses, then the verified statements have not been supplied to the petitioner since the compilation does not include them. Therefore, the order of detention would suffer from the vice of non-supply of material documents.

7. On the aforesaid consideration, it is clear that the order of detention cannot be sustained in the eye of law. Therefore, the said order is required to be quashed and set aside since further continuance of the detention of the detenu cannot be sustained in the eye of law.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 30.10.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp